

BILLY WRIGHT

IBLA 77-69

Decided February 23, 1977

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 22056.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where information concerning the terminal illness of lessee's brother demonstrates the requisite proximity and causality to justify the delay in payment, the lease may be reinstated.

APPEARANCES: Billy Wright, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Billy Wright appeals from a decision of the New Mexico State Office, Bureau of Land Management, dated October 27, 1976, denying his petition for reinstatement of oil and gas lease NM 22056. The lease had terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease, September 1, 1976. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The envelope in which the payment was transmitted bears a post-mark of August 31, 1976. The State Office received the payment on September 2, 1976.

In his petition for reinstatement, appellant explained that he purchased and mailed a cashier's check for the rental payment on August 31, 1976. He said that he is accustomed to 1-day mail service in his area.

In its decision denying the petition for reinstatement, the State Office recounted that it had checked with the Midland Post Office and was informed that service from Midland, Texas, to Santa Fe, New Mexico, on first class mail is 2 days. The State Office denied the petition because appellant had not satisfactorily complied with the requirements for reinstatement as provided by the Act of May 12, 1970, 30 U.S.C. § 188(c) (1970), and 43 CFR 3108.2-1(c).

In his statement of reasons on appeal, Wright explains that in September 1976 his brother was suffering from terminal cancer, underwent surgery and died in several weeks time. Appellant, who is single, states that he had a close relationship with his brother and was distraught during this time because of the knowledge of his brother's pain, suffering and surgery. Consequently, appellant was unable to give full attention to his business affairs, and the rental payment was not mailed sufficiently in advance of the due date to arrive on time.

Appellant enclosed an affidavit of admittance to Midland Memorial Hospital and a copy of his brother's death certificate which verify his allegations concerning his brother's terminal illness.

[1] 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) provide for the reinstatement of oil and gas leases which have terminated for failure to pay annual rental on time. Among other things, a lease may be reinstated if the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. In defining "justifiable" the Board has stated:

It seems reasonably clear that Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. This is thus a subjective test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family, occurring [*sic*] with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed Civ. No. CV-74-1112-EC (C.D. Calif. 1975); Fredres E. Laubaugh, 24 IBLA 306 (1976). See also Kenneth F. Santor, 13 IBLA 208, 210 (1973), aff'd Santor v. Morton, 383 F. Supp. 1265 (D. Wyo. 1974).

The information submitted by appellant concerning the illness and death of his brother demonstrates the requisite proximity and causality to deem the delay in payment "justifiable" under the law. His lease should be reinstated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for action consistent with the opinions expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

